

Make No Amends

The 105th Congress is expected to consider as many as seven separate constitutional amendments, including proposals to prohibit flag burning, provide for victims' rights, eliminate automatic birthright citizenship, balance the budget, require a supermajority vote to increase taxes, limit Congressional terms and permit school prayer.

Amending the Constitution is the most serious—and irreversible—action Congress can take. Before approving any constitutional revision, we should assure ourselves that the amendment is fully justified; will not have adverse, unintended consequences; is fully enforceable; and is consistent with our constitutional values. Unfortunately, the amendments being considered in this Congress are motivated more by partisan politics than by sound policy considerations.

Advocates of a flag desecration amendment cannot point to an outbreak of disrespect for the flag warranting constitutional action. Studies indicate that in all of American history, from the adoption of the U.S. flag in 1777 through the Supreme Court's first flag desecration decision in 1989, there have been fewer than forty-five reported incidents of flag burning. By propounding a constitutional amendment under these circumstances, we succeed only in trivializing the Constitution.

Similarly, given that twenty-nine states have already amended their Constitutions to protect crime victims, there is no compelling justification for a federal victims' rights amendment. Although victims' rights groups argue that a constitutional remedy is necessary to overcome a supposed conflict between these state laws and a defendant's right to due process, to date no federal appellate court has found such inconsistency to exist.

Repealing the Fourteenth Amendment's birthright citizenship clause illustrates the problem of unintended consequences. Tying the citizenship status of children to their parents creates a permanent underclass of people having no national allegiance; those born in the United States would be unable to report legal abuses for fear of deportation. It's no wonder that in her last official speech as chairwoman of the Immigration Commission, the late Barbara Jordan declared, "To deny birthright citizenship would derail [the] engine of American liberty."

Constitutional amendments requiring a balanced budget and a two-thirds majority to increase taxes threaten to create constitutional "rights" with no meaningful remedy. It's impossible to identify which branch of government, if any, would be empowered to enforce the amendments. The amendments' meaning is also opaque: Would they apply to bills reducing tax revenues

in some years but increasing them in others? What's the meaning of the supermajority tax amendment's exception for "de minimis" tax increases?

The term limits amendment contradicts what is perhaps our most fundamental constitutional principle: majority rule. There is little difference between forcing citizens to vote for a particular candidate and denying them the ability to vote for that same person. Instead of giving us more responsive "citizen legislators," term limits are more likely to result in a transfer of power from elected representatives to unelected Congressional staff, federal bureaucrats and corporate lobbyists.

Finally, the school prayer amendment directly undermines the First Amendment's establishment clause. Although the amendment purports to prevent states from compelling students to join in prayer, it wouldn't limit the authority of the schools or teachers themselves, who could begin every day with the delivery of a sectarian prayer before a captive audience of children. Any student gathering could become a competitive ground for students to organize and protest their religious views, irreparably blurring the separation of church and state.

Given these clear-cut policy problems, why is Congress contemplating the most far-reaching constitutional overhaul since the very first Congress approved the Bill of Rights? Proponents can only fall back on a series of polls indicating public support for these dubious propositions. But the polls inevitably fail to highlight the many difficulties inherent in the amendments.

For example, support for a balanced budget amendment drops precipitously when the public is informed it will jeopardize our commitment to Social Security. And flag burning and school prayer amendments are far less popular when voters realize they would result in a first-ever modification of the First Amendment. At a time when a majority of the public believes Newt Gingrich should step down as Speaker, polls would seem to be a thin reed to justify these radical constitutional changes.

Bumper-sticker politics aside, now is not the time to substitute poll-driven constitutional amendments for serious legislative deliberation. Nothing in any of the amendments being considered in this Congress would create a single job, prevent a single crime, educate a single child or clean up a single environmental waste site. The Constitution has provided us with the most enduring and successful democracy in history, and unless we're absolutely convinced of the need for change, we ought to give our current political system the benefit of the doubt.

JOHN CONYERS JR.

John Conyers Jr. is the ranking member of the House Judiciary Committee.